

Message Text

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ACTION ARA-10

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 8586

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 0902

FOR ARA

EO 11652: GDS

TAGS: EIND, BDIS, EINV, PFOR, PE

SUBJ: MARCONA

1. U.S. TEAM DEPLANED DIRECTLY INTO SEVEN HOURS OF NEGOTIATIONS JANUARY 27. THESE INCLUDED GENERAL STRATEGY LUNCHEON AT BANCO POPULAR AND TECHNICAL MEETING AT PETROPERU. AMBASSADOR DEAN ACCOMPANIED ENTIRE U.S. TEAM THROUGHOUT.

2. AT LUNCHEON, U.S. SIDE MET WITH BROUSSET, DELGADO AND AMBASSADOR LUIS MARCHAND. MARCHAND, WHO HAS JUST BECOME SECRETARY GENERAL OF FOREIGN MINISTRY, ACTED AS HEAD OF GOP TEAM, REPLACING AMBASSADOR DE LA PUENTE, WHO IS IN PARIS AS CO-CHAIRMAN OF THE CIEC RAW MATERIALS COMMISSION. DISCUSSION FOCUSED ON THE GENERAL CONDUCT OF THE NEGOTIATIONS, PARTICULARLY THE TIMING OF THE FINAL AGREEMENT AND THE PROCEDURES TO BE USED TO ATTAIN IT.

3. BROUSSET EXPLAINED THAT, AFTER SOME DELAYS DUE TO INTERNAL OPPOSITION TO THE USE OF THE ACCOUNTING FIRM PREVIOUSLY EMPLOYED BY MARCONA, THE CONTRACT WITH PRICE WATERHOUSE WOULD BE SIGNED NEXT WEEK TO COMPLETE THE NECESSARY AUDIT OF MARCONA'S BOOKS AT THE MOMENT
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OF EXPROPRIATION. PRICE-WATERHOUSE, HOWEVER, WOULD

REQUIRE SIXTY DAYS TO COMPLETE ITS WORK AND THIS WOULD NECESSARILY JEOPARDIZE REACHING A FINAL AGREEMENT BEFORE APRIL. FISHLOW ANSWERED THAT SUCH A DELAY WAS NOT IN THE INTEREST OF EITHER COUNTRY, AND THAT AGREEMENT SHOULD DEFINITELY BE REACHED BEFORE THE MARCH 11 EXPIRATION OF THE NINETY-DAY TERM FIXED IN THE INTERIM AGREEMENT. THE PERUVIANS AGREED THAT AN AGREEMENT IN PRINCIPLE, SUBJECT ONLY TO ANY UNFORESEEN DEVELOPMENTS UNCOVERED BY THE FINAL AUDIT, COULD BE REACHED BY MARCH 8-9.

4. MARCHAND THEN RAISED THE QUESTION OF PROCEDURE ON CONSIDERATION OF MARCONA'S VARIOUS OUTSTANDING DEBTS. HE DIVIDED THESE INTO FOUR CATEGORIES: TAXES, MINING OPERATIONS, PORT CLAIMS, AND CUSTOMS ISSUES. NOTING THAT THE TIME HAD COME TO "CLEAR AWAY THE UNDERBRUSH" MARCHAND SUGGESTED THAT WE TAKE UP EACH ISSUE SERIATIM ON TECHNICAL GROUNDS IN MEETINGS WITH THE FULL PERUVIAN COMMISSION BEGINNING THAT AFTERNOON. FISHLOW RESPONDED THAT HE FOUND THIS PROCEDURE ENTIRELY ACCEPTABLE BUT NOTED THAT THE PERUVIAN SIDE SHOULD KEEP IN MIND THAT ANY CALCULATIONS TO INCREASE MARCONA'S DEBTS--WHICH THEREBY INCREASED MARCONA'S TAXABLE INCOME--WOULD INEVITABLY HAVE TO BE REFLECTED IN THE GOING-CONCERN VALUATION OF MARCONA REQUIRED BY THE U.S., AND WOULD THUS LEAD TO AN INCREASE IN THE FIRM'S VALUE AND THE REQUIRED COMPENSATION. IN FACT, THE INCREASE IN VALUATION IS GREATER THAN THE INCREASE IN DEBT. THUS, HE CONCLUDED, FOR THE PERUVIANS TO INFLATE THEIR CLAIMS WOULD NOT HELP TO ARRIVE AT A SOLUTION. FISHLOW'S ARGUMENT STRUCK HOME. DELGADO RESPONDED THAT THE PERUVIANS WERE AGREED THAT IT WOULD BE SUICIDAL TO FOLLOW TACTICS THAT WOULD INFLATE THE ULTIMATE FIGURE AND THAT THEIR EFFORT TO DEAL WITH THE TAX CLAIMS WAS DONE IN A SPIRIT NEITHER OF DEFLATING OR INFLATING FINAL SETTLEMENT BUT OF MEETING PERUVIAN LAWS. AGREEMENT WAS REACHED THAT THE PERUVIAN TECHNICIANS WHO HAD DEVELOPED THE CLAIMS WOULD RECEIVE "THEIR DAY IN COURT" DURING THE TECHNICAL COMMISSION REVIEW SO AS TO ENABLE THE U.S. SIDE TO PRESENT COUNTERARGUMENTS.

5. FISHLOW THEN POINTED OUT THAT DESPITE THE INCREASINGLY PROTRACTED NEGOTIATIONS IN WHICH WE HAD BEEN ENGAGED, CONFIDENTIAL

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WE HAD RECEIVED NO CLEAR INDICATION OF WHAT THE GOP WOULD IN FACT BE PREPARED TO PAY. BROUSSET CONCURRED, AND INDICATED THAT HE THOUGHT IT MIGHT BE POSSIBLE FOR THE PERUVIAN SIDE TO GIVE US A "MINIMUM VALUE" MET BY ALL CLAIMS BEFORE WE LEFT LIMA ON THIS TRIP.

6. BROUSSET THEN ADDED THAT IT WOULD BE EXTREMELY USEFUL IN THIS REGARD FOR THE USG ALSO TO GIVE SOME

INDICATION OF WHAT NET FIGURES IT CONSIDERED APPROPRIATE. U.S. SIDE FORCEFULLY RESPONDED THAT IT HAD ALREADY GIVEN CLEAR PROOFS OF ITS GOOD INTENTIONS, BOTH IN REDUCING MARCON'S INITIAL DEMANDS AND IN THE STRUCTURE OF THE INTERIM AGREEMENT, WHICH CONFIRMED PERU'S CONTROL OF ORE SALES. U.S. SIDE NOT PREPARED TO ENGAGE IN CAPRICIOUS BARGAINING. FOR EXAMPLE, SAID FISHLOW, WE ARE NOT PREPARED TO HAVE PERU SAY 30, ELICIT FROM US A COUNTER OF 83, AND THEN SETTLE ON 55 BY DIVIDING THE DIFFERENCE. THIS WAS NOT A TIME TO QUIBBLE OVER 20 OR 30 MILLION DOLLARS. IT WAS TIME FOR PERU TO FACE THE NEED TO GET ITS EXPORTS MOVING AND ECONOMY IN ORDER. IT WAS TIME FOR PERU TO PRESENT US WITH ITS CONCLUSIONS BASED ON THE ELEMENTS AT HAND, WHICH INCLUDED BOTH THE SEIZED ASSETS AND THE POTENTIAL CONTRIBUTION OF THE ON-GOING RELATIONSHIP.

7. THE DISCUSSION THEN RETURNED TO THE NEED FOR MARCONA TO PRESENT ITSELF TO THE PERUVIAN TAX AUTHORITIES SO THAT PENDING CLAIMS COULD BE ADJUDICATED. THE PERUVIANS STRESSED THAT IT WAS ESSENTIAL TO KEEP THEIR TECHNICAL-LEVEL MINISTRIES AND TAX AUTHORITIES INVOLVED IN REACHING A FINAL SETTLEMENT. THE U.S. SIDE RESPONDED THAT IT WAS, OF COURSE, OUT OF THE QUESTION FOR MARCONA TO THROW ITSELF ON THE MERCY OF THE TAX AUTHORITIES WITHOUT ANY PRIOR UNDERSTANDING. THE PERUVIANS RESPONDED THAT THEY UNDERSTOOD, AND HOPED WE COULD WORK OUT SOME FORM OF PARALLEL SUBMISSIONS, WITH MARCONA PRESENTING THE REQUISITE DOCUMENTATION ON THOSE CASES WHICH THE TWO SIDES HAD DECIDED WERE TO BE RESOLVED IN MARCONA'S FAVOR.

8. THE LUNCH CONCLUDED WITH A LONG DISCUSSION OF
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MARCONA'S OVERALL RELATIONSHIP WITH PERU IN THE PAST AND THE EXTENT TO WHICH PERU HAD BOTH PROFITTED AND LOST FROM THIS RELATIONSHIP.

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INFO OCT-01 ISO-00 ARAE-00 EB-07 COME-00 TRSE-00 SP-02

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C O N F I D E N T I A L SECTION 2 OF 2 LIMA 0902

FOR ARA

9. THE TECHNICAL COMMISSION MEETING IN PETROPERU WAS DEVOTED TO THE DISCUSSION OF TAX CLAIMS. GANTZ OPENED BY SUMMARIZING THE MEMORANDUM THE U.S. SIDE HAD PREVIOUSLY SUBMITTED, ADDING TWO ADDITIONAL POINTS (DEPLETION AND EXCHANGE LOSSES) ON WHICH HE PRESENTED WRITTEN DOCUMENTATION FOR THE PERUVIANS TO CONSIDER. DR. LA ROSA, REPRESENTING THE TAX AUTHORITIES (DIRECCION GENERAL DE CONTRIBUCIONES), LED THE DISCUSSION ON THE PERUVIAN SIDE AND FOCUSED ON FOUR OF THE FIVE ISSUES RAISED IN THE ORIGINAL U.S. MEMORANDUM. LA ROSA PRESENTED HIS CASE CALMLY AND CLEARLY AND WAS ANSWERED JUST AS FIRMLY BY THE U.S. SIDE. ON THREE OF THE FOUR POINTS DISCUSSED, DEMURRAGE, PURCHASING COMMISSIONS, AND BONUS TO FOREIGN CONTRACT PERSONNEL, THE PERUVIAN POSITION CAME DOWN TO A REQUEST FOR DOCUMENTARY PROOF THAT EXEMPTIONS CLAIMED REFLECTED SERVICES THAT HAD ACTUALLY BEEN PERFORMED AND THAT COULD BE JUSTIFIED IN RELATIONSHIP TO THE FULFILLMENT OF THE COMPANY'S FUNCTIONS. ON THE WHOLE, IT APPEARED THAT THESE CLAIMS COULD BE FOR THE MOST PART SET ASIDE SHOULD MARCONA PRESENT THE NECESSARY DOCUMENTATION. LA ROSA WAS UNABLE TO RESPOND ADEQUATELY ON THE FREIGHT TAX, BUT DID INDICATE THAT IT COULD BE WAIVED IF THE COUNTRIES OF REGISTRY OF MARCONA CARRIERS' SHIPS DID NOT TAX PERUVIAN SHIPS.

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10. THE QUESTION OF THE FOUR-PERCENT SALES COMMISSION WAS DEFERRED UNTIL THE NEXT DAY AT PERUVIAN REQUEST, PENDING COMPLETION OF CONSULTATIONS BETWEEN TAX AUTHORITIES AND THE MINISTRY OF COMMERCE.

11. COMMENT: MARCH 11 IS APPROACHING RAPIDLY AND WE

BELIEVE THE PERUVIANS ARE NOW AWARE THAT THE DATE RE-
PRESENTS A GENUINE DEADLINE, AND WILL MAKE EVERY EFFORT
TO MEET IT. FURTHER STRATEGY AND TECHNICAL DISCUSSIONS
WERE SCHEDULED FOR JANUARY 28, WHEN WE EXPECT THE
TECHNICAL DISCUSSIONS TO BE COMPLETED. WE ARE UNABLE TO
PREDICT NOW WHAT FORM A
"MINIMUM GUARANTEE" BY THE GOP MIGHT TAKE.
DEAN

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